EDITOR'S NOTE:

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(1)

90-1073

Supreme Court, U.S.
FILED
JAN 4 1991
JOSEPH F. SPANIOL, JR.
CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

.....

OCTBOER TERM, 1990

.....

MARIE M. MCMAHON

Petitioner,

v.

CHARLES S. TRUMP, IV, ET AL

Respondents.

PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

.....

PETITION FOR WRIT OF CERTIORARI

.....

Marie M. McMahon, pro se
103 Pratt Street
Berkeley Springs, WV 25411
(304) 258-1117

QUESTIONS FOR REVIEW

1. Does having a valid election demand that candidate seeking office be eligible to hold said office per applicable laws, such candidate seeks to gain?

2. Does all requirements of election laws have to be met by all participating in said election (or a part thereof in any way) in order to eleminate election fraud against the people and have a valid election?

3. Does collusion between a town recorder, candidates and others who stand to gain something of value to them personally, constitute a valid election?

4. Should all candidates have to meet the same requirements as voters in order to be eligible for office?

5. Is it fraud for any candidate to seek an office which said candidate knows he is not eligible to hold?

6. Does such acts as suggested above in any question violate the "Equal Protection" of the public?

PARTIES TO PROCEEDING

1. Charles S. Trump, IV, ex-recorder.
   110 Fairfax Street
   Berkeley Springs, WV 25411(304) 258-1414.

2. J. Phillip Kesecker, Real estate
   268 Valley Road (P.O. Box 400)
   Berkeley Springs, WV 25411(304) 258-2624.

3. Harleigh E. Seely, Real estate, furniture.
   P. O. Box 70 (522 South)
   Berkeley Springs, WV 25411(304)258-2343.

4. Lisa M. Gruber, ex-recorder/councilmbr.
   422 Fairfax Street
   Berkeley Springs, WV 25411 (304) 258-3154.

5. R. Eldon Metzger, Contractor/ex-council.
   301 Martinsburg Road
   Berkeley Springs, WV 25411

6. Stephen C. McBee, Insurance/ex-council.
   130 Fairfax Street
   Berkeley Springs, WV 25411 (304)258-2403.

7. David H. Savasten, ex-prosecutor/asst pro.
   105 North Washington Street
   Berkeley Springs, WV 25411 (304) 258-2063.

8. Grace Borell, former council member.
   404 Congress Street
   Berkeley Springs, WV 25411

9. David M. Hall, ex-council member.
   601 Johnson Mill Road
   Berkeley Springs, WV 25411 (304) 258-1243.

10. Mary Gano Parrill, ex-council member.
    109 Pratt Street
    Berkeley Springs, WV 25411 (304)258-1108.

11. Melissa K. Marland, Adm Law Judge (PSC)
    201 Brooks Street
    Charleston, WV 25323

12. Thomas W. Steptoe, Jr., Cir. Ct. Judge.
Jefferson County Courthouse
Charles Town, WV 25414

13. Andrew M. Frye, Jr., Cir. Ct. Judge.
P. O. Box 446
Petersburg, WV 26847-0446

14. C. Reeves Taylor, Cir Ct. Judge.
Mineral County Courthouse
Keyser, WV 26726

15. Richard Gay, County Com./attorney.
202 Congress Street
Berkeley Springs, WV 25411

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I

JURISDICTION OF U.S. SUPREME COURT

On October 12 and 19, 1990, the United States Court of Appeals for the Fourth Circuit denied Petition for Rehearing/Rehearing in BANC. Fourth Circuit affirmed District Court on September 17, 1990, and October 3, 1990. Reconsideration was denied by District Court January 30, 1990; District Court dismissed on January 17, 1990.

The Supreme Court of the United States has jurisdiction to review the judgments in question under 28 U.S.C., sec. 1254 (1), 2106 and Rule 10, Rules of Supreme Court.

II

CONSTITUTIONAL AND STATUTORY PROVISIONS

1. First Amendment, United States Const.

"Courts shall make no law"..."Abridging the rights of the people"..."To petition the Government for redress of grievances."

2. Fourteenth Amend., United States Const.

"All persons born or naturalized in the United States , and subject to the jurisdiction thereof, are citizens of the United States and of

State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive ...any person within its jurisdiction the equal protection of the laws."

3. Supremacy Clause, Art. 6, Cl 2

> "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitutions or Laws of any State to the Contrary notwithstanding."

4. 42 U.S.C. sections 1983 and 1985.

Deprivation of rights, privileges, or immunities ...conspiring to deprive directly or indirectly...to person and class of persons the equal protection of the laws...acts done in furtherance of the object of such conspiracy whereby another is injured in his person or property ...the party so injured or deprived may have an action for recovery....

III

STATEMENT OF THE CASE

In 1987, then recorder Trump placed four people on the Town Council ballots who were not eligible to serve the people, per applicable laws.

a. Lisa M. Gruber did not live in the town, per her property deed (violation of WV Constitution, state code, and Town Ordinance).

b. R. Eldon Metzger was on parole (violation of U. S. Const.Art 2, sec. 4 and WV Code).

c. Stephen C. McBee is in insurance and his firm had town's insurance,(violation WV Code)(Town Ordinance).

d. David M. Hall, federal employee (violation of Hatch Act.).

2. These four were elected (no opposition) and immediately voted in council to allow extension of water lines to developers Kesecker and Seely, clients of recorder Trump.

3. Petitioner saught removal from office Gruber/Metzger on constitutional grounds which were clearly documented.

4. Attorney(county commissioner presently)

Gay's defense fee was taxpayer's money.

5. Councilmembers McBee/Gruber/ Metzger/ Parrill/Borell and Hall at one time or another voted to pay in toto $3463.93 to Gay.

6. Four Town Citizens filed with Public Service Commission (PSC) against giving the extension of water lines to developers...Petitioner saught a moratorium submitting over 250 signatures supporting same, all to no avail... PSC Law Judge granted developer's request, misrepresenting facts in order to do so. Town subsequently pumped water for months.

7. Circuit three-judge panel refused to rule on constitutional issues; sworn evidence shows pre-determination of their outcome.

8. West Virginia Supreme Court also refused to rule per constitutions or at all.

9. Petitioner later filed a class action claim in federal court; that Court dismissed, using Rule 12 b(6) and immunity for some, legislative acts for others and Rule 23a(4)deficit.

10. Fourth Circuit affirmed Dist. Court.; also used wrong date on Mandate, is Oct. 12.

11. Savasten (prosecutor at that time) re-

fused to prosecute Gruber/Metzger unless "They were after my office," locally. He also does (or his office does) much deed work for at least one of the developers (Kesecker).

12. It would be poetic justice to have those who violated the hereinabove pled laws be forced to pay Petitioners enough money to repair all the old 100 (almost) year old water system and the streets wherein said old system (water lines) lie.

13. Item 12 and the attempt to protect the Constitutions is why Petitioner filed the suit in the first place, in vice versa order.

14. This Petitioner, per se, is desperate to have judges uphold and support their Constitutional Oaths of Office. If lower courts would so act, the work load to the appeals courts could be cut drastically...also to THIS COURT. If this can not be done, then our soldiers should refuse to go to war to keep "KINGS" in office!

15. Petitioner, per se, submits the Supremacy Clause and the respective Oaths of Office does not allow for such "discretion"

by any judge concerning Constitutional Issues ...not only would Cavasten not prosecute these issues, he would not proscute election laws violations, misapproprated money nor any illegally spent taxpayer money. Additionally, the West Virginia Code does not give him any "Discretion" in that matter either. The word "SHALL" applies to all.

IV DISCUSSION OF LAW APPLICABLE

As pled above, The Constitutions as well as West Virginia Code 7-5-4 states these acts as pled SHALL demand attention and action from those people complained about herein. The judges SHALL be bound...the prosecutor SHALL prosecute...that leaves no room for discretion by either. Further, ALL have sworn to support and uphold said Constitutions. They should be prosecuted for false swearing and failure to do their duties.

In federal courts, redress for grievance about illegal acts of individuals (as well as in state courts) in a meaningful manner has not been forthcoming, instead were dismissed by

District Court, is illegal per Mitchell v. King 537 F 2d 385 (1980)because factual allegations of complaint must be accepted as true and according to Conley v. Gibson, 355 U.S. 41 (1957) District Court could not dismiss under Rule 12 if there are any facts under which relief can be granted. Ryland v. Shapiro, 708 F 2d 967 (1983) tells us:

> Mere formal right to access to the courts does not pass constitutional muster, but rather, access must be adequate, effective and meaningful, and interference with access to courts give rise to claim for relief under 1871 civil rights statute, 42 USCA, section 1983.

AND further under Lynk v. La Porta Superior Court No. 2, 789 F 2d 554 (7th Cir 1986) says:

> State's unreasonable refusal to allow federal question to be presented in its courts would be violative of the Supremacy Clause, which Supreme Court could rectify on direct review of state court's judgment. U.S. Const. Art. 6, Cl 2.

Therefore, when the three-judge panel refused to consider Metzger's Art 2, sec 4 violation of the United States Constitution, they denied equal protection to the people of the Town of Bath (Berkeley Springs) WV. If all

those people SHALL be removed, so SHALL Metzger.

Also, when the voters of the Town had to meet certain legal terms to be able to vote, per the election laws, so should said candidates have also met the same requirements. It is a Constitutional requirement of West Virginia to live in the precinct wherein they offer to vote for a period of sixty days next preceeding the election...one must be able to vote to be elected to office, per WV Const. Where is the equal protection of the law.

Since Constitutional Rights have been denied per the above by these individuals, the judges lost jurisdiction thereby according to Barger v. State of Kan, 620 F Supp 1432 (1985)

> We have, however, consistently held that suits against officers in their individual capacities are not barred by the Eleventh Amendment, citing Back v. Kansas University Psychiatry Foundation, 580 F Supp 1216 (D Kan 1983). We have allowed such to proceed on the theory that when an officer acts unconstitutionally, he is "stripped of his official or representative character and is subjected to the consequences of his official conduct. Cites omitted. Cases from 1908 thru 1984.

Further Mr. Justice Stevens stated in his opinion in Daniels v. Williams, "The constitu-

tional violation is complete as soon as the prohibited action is taken" (106 S. Ct. at 678) "The independent federal remedy is then authorized by the language and legislative history of section 1983." Also 88 Law Ed 2d 672 (1986).

V. FUNDAMENTAL RIGHTS VIOLATED

Petitioners fundamental rights were violated and they were injured thereby, by those who had the duty to act exactly the opposite; to uphold and support the Constitutions they themselves had so sworn to do. There is a pattern of such conduct by both state and federal officials. It is high time for such to stop. This Court should take steps to do just that!

VI. ARBITRARY ACTION

THIS COURT said in Daniels, supra, that the Fourteenth Amendment protects from such arbitrary action by Respondents, as herein pled. PLEASE TAKE JUDICIAL NOTICE OF ALL APPLICABLE LAWS to these facts, most of which are documented at lower courts.

VII. CONCLUSION

For those reasons stated above, this Writ

of Certiorari should issue; the lower courts refused to correct same; to fail to do so further abuses the Constitutions and conflicts with various United States Courts of Appeals decisions as cited herein and also conflicts with rulings previously by THIS COURT.

The Fourth Circuit failed to rule in accord with other Circuit of Appeals Courts (though given the chance) when it certainly appears that Lynk, supra, (7th Cir 1986) not only ruled against state's "unreasonable refusal" concerning federal issues, but states a provision for direct review by THIS COURT for state court's refusal to allow federal question in said court, is provided by the Supremacy Clause. THIS COURT SHOULD ACT!

Respectfully submitted,

Marie M. McMahon

Marie M. McMahon, pro se
103 Pratt Street
Berkeley Springs, WV 25411
(304) 258-1117

APPENDIX

U.S.Dist.Ct.
Filed at
Clarksburg
90 Jan 17PM
1:16

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF WEST VIRGINIA

MARIE M. MCMAHON
Plaintiff

vs. Civil Action No. 89-0020-M(K)

CHARLES S. TRUMP, IV, et als.,
Defendants.

J U D G M E N T

The Court, having granted all defendants' motions to dismiss, hereby enters for the defendants.

The Clerk is directed remove this action from the docket of the Court and to transmit certified copies of this Judgment to the Plaintiff and counsel of record herein.

ENTER: 1/17/90

S/William M. Kidd
William M. Kidd
United States District Judge

I hereby certify that
the annexed instrument is a
true and correct copy of the original
filed in my office.
ATTEST: Dr. Wally Edgell
Clerk, U.S.District Court
Northern District of West Virginia

By: S/ Sheree N Thompson

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF WEST VIRGINIA

MARIE M. MCMAHON,
Plaintiff,

vs. Civil Action No. 89-0020-M(K)

CHARLES S. TRUMP, IV, et als.,
Defendants.

O R D E R

On January 26, 1990, the plaintiff file a motion for reconsideration, Upon review of said motion, the Court is of the opinion that the same is without merit and should be DENIED.

The Clerk is directed to transmit certified copies of this Order to the plaintiff and counsel of record herein.

ENTER: 1/30/90

S/ William M. Kidd
William M. Kidd
United States District Judge

I hereby certify that the annexed instrument is a true and correct copy of the original filed in my office.
ATTEST: Dr. Wally Edgel
Clerk U.S. District Court
Northern District of West Virginia

By: S/ Sheree N. Thompson

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 89-2840

MARIE M. MCMAHON, pro se, individually and on behalf of all persons similarly situated.

Plaintiff-Appellant,

Versus

CHARLES S. TRUMP, IV; J. PHILLIP KESECKER; HARLEIGH E. SEELY; LISA M. GRUBER; R. ELDON METZGER; STEPHEN C. MCBEE; DAVID H. SAVASTEN; GRACE BORELL; DAVID HALL; MARY GANO PARRILL; MELISSA K. MARLAND, Public Service Commission; THOMAS W. STEPTOE, JR.; ANDREW M. FRYE, JR.; C. REEVES TAYLOR; RICHARD GAY,

Defendants-Appelles.

Appeal from the United States District Court for the Northern District of West Virginia, at Martinsburg. William M. Kidd, Senior District Judge. (C/A No. 89-20-M-K)

Submitted: December 29, 1989 Decided: September 17, 1990.

Before HALL, MURNAGHAN, AND WILKINSON, Circuit Judges.

Affirmed by unpublished per curiam opinion.

Marie M. McMahon, Appellant Pro Se. Charles F. Printz, Jr., Rice, Douglas & Shingleton, Martinsburg, West Virginia; Franklin Dorrah Cleckley, Morgantown, West Virginia; William B. Carey, Berkeley Springs, West Virginia; David Paul Cleek, Charleston, West Virginia, for Appellees.

PER CURIAM:

Marie M. McMahon appeals from the district court's order denying relief under 42 U.S.C. § 1983.* Our review of the record and the district court's opinion discloses that this appeal is without merit. Accordingly, we affirm on the reasoning of the district court. McMahon v. Trump, C/A No. 89-20-M-K (N.D.W.Va. Oct 3,1989; Jan. 17, 1990: Jan 30, 1990). We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the Court and argument would not aid the decisional process.

AFFIRMED

---

* In her "Amended Notice of Appeal" filed on February 7, 1990, McMahon has apparently abondoned her appeal from both the October 3, 1989, order granting the motion to dismiss the complaint as a class action and the October 20, 1989 order denying her motion for reconsideration of the court's October 3, 1989, orders dismissing some of the defendants from the action.

Unpublished opinions are not binding precedent in this circuit.
See I.O.P. 36.5 and 36.6

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

FILED
October 12, 1990

No. 89-2840

MARIE M. MCMAHON, pro se, individually and on behalf of all persons similarly situated.
Plaintiff-Appellant

v.

CHARLES S. TRUMP, IV; J? PHILLIP KESECKER; HARLEIGH E. SEELY; LISA M. GRUBER; R ELDON METZGER; STEPHEN C. MCBEE; DAVID H. SAVASTEN; GRACE BORRELL; DAVID HALL; MARY GANO PARRILL MELISSA K. MARLAND, Public Service Commission; THOMAS W. STEPTOE, JR.; ANDREW M. FRYE, JR.; C. REEVES TAYLOR; RICHARD GAY:
Defendants-APPELLEES

On Petition for Rehearing with Suggestion for Rehearing in Banc

---

The Appellant's petition for rehearing and suggestion for rehearing in banc were submitted to this Court. As no member of this Court or the panel requested a poll of the suggestion for rehearing in banc, and

As the panel considered the petition for rehearing and is of the opinion that it should be denied,

IT IS ORDERED that the petition for rehearing and suggestion for rehearing in banc are denied. For the Court, John M. Greacen, Clerk.

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

FILED
October 19, 1990

No. 89-2840

McMahon v. Trump

M A N D A T E

The Judgment of this court dated 9/17/90 takes effect today.

JOHN M. GREACEN
CLERK

.....
This ADDEMDUM by Petitioner...Petitioner did not abondon any appeal which records should reflect AND she is convinced that the 9/17/90 date above hereon is not correct...if so this Petitioner did not receive a copy of such Judgment. Marie M. McMahon, 12/18/90.
.....

RESPONSE REQUESTED

No. 90-1073

Supreme Court, U.S.
FILED
MAR 15 1991
OFFICE OF THE CLERK

In The Supreme Court Of The United States

OCTOBER TERM, 1990

MARIE M. McMAHON

Petitioner,

v.

CHARLES S. TRUMP, IV, J. PHILLIP KESECKER, HARLEIGH E. SEELY, LISA M. GRUBER, R. ELDON METZGER, STEPHEN C. McBEE, DAVID H. SAVASTEN, GRACE BORELL, DAVID M. HALL, MARY GANO PARRILL, MELISSA K. MARLAND, THOMAS W. STEPTOE, JR., ANDREW M. FRYE, C. REEVES TAYLOR, and RICHARD GAY

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

RESPONDENTS' BRIEF

Franklin D. Cleckley
ATTORNEY AT LAW
Post Office Box 4
Morgantown, West Virginia 26505
(304) 292-3652

Counsel for Respondents

LAWYERS PRINTING COMPANY 7th & Franklin Bldg. Richmond, Virginia 23219 (804) 648-3664

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McMahon v. Trump, No. 89-2840 (4th Cir. Sept. 17, 1990) (per curiam) 1, 7, 8

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Slotnick v. Staviskey, 560 F.2d 31 (1st Cir. 1977) 11

STATEMENT OF CASE

Petitioner believes fundamental rights have been denied by elected officials, state officials, and state judges. Her belief is based on personal and conclusory affirmations of law which have found no favor in either state or federal court. From the Circuit Court of Morgan County, West Virginia, through the United States Court of Appeals for the Fourth Circuit, McMahon v. Trump, No. 89-2840, slip op. at 3 (4th Cir. Sept. 17, 1990) (per curiam), her complaints and appeals have been found to be without merit.

She now has before this Court every personage she has ever attempted to bring before any other court singly or as part of a group for the claims she presents. It is better to give a thorough history of this case as we know it from the beginning.

HISTORY OF THE CASE

1. This case began on June 3, 1987, before the Circuit Court of Morgan County, West Virginia, when petitioner challenged the eligibility of respondent Lisa M. Gruber for public office. Respondent Richard Gay was the defense attorney, and respondent Thomas W. Steptoe, Jr. was the judge. The court dismissed the action on July 13, 1987, for failure to state a claim.

2. On July 23, 1987, petitioner filed a complaint requesting a writ of mandamus that respondent David H. Savasten, Prosecuting Attorney of Morgan County, prosecute Gruber for failure to prosecute alleged political campaigning infractions by Gruber. Respondent Charles S. Trump IV was defense counsel. The Circuit Court of Morgan County, respondent Steptoe presiding, denied the

writ on September 1, 1987, citing the discretionary powers of a prosecuting attorney under West Virginia law.

3. In May, 1988, petitioner filed charges against respondent Gruber and in July, 1988, against respondent R. Eldon Metzger to have both removed from office. Petitioner alleged improper use of taxpayers' funds on votes taken by respondents, or conflicts of interest as, for instance, respondent Metzger's wife's deceased mother had been the wife of a land developer seeking extension of a water line which Metzger voted for and petitioner was against, or negligence in voting for the water line extension. Respondent Gay was again the defense attorney. Petitioner included complaints against Prosecuting Attorney Savasten and against the Circuit Court of Morgan County for allowing attorney

fees to respondents for previous actions filed by petitioner.

Pursuant to an order dated June 21, 1988, from Thomas E. McHugh, Chief Justice of the West Virginia Supreme Court of Appeals, the petition went before a panel of three state judges, respondents Steptoe, C. Reeves Taylor and Andrew M. Frye. Judges Taylor and Frye were from judicial districts different than Judge Steptoe. The panel dismissed with prejudice petitioner's complaint to have Gruber and Metzger removed from office in a detailed order, McMahon v. Gruber, C/A Nos. 88-P-13 & 88-P-14 (Cir. Ct. of Morgan County, W. Va., Sept. 28, 1988). Further, it upheld the award of attorney fees for previous actions against respondents.

4. On June 1, 1989, petitioner filed a complaint in the United States

District Court for the Northern District of West Virginia against all the above respondents alleging with specificity according to the allegation: violations of constitutional rights, conspiracy to trade favors and things of value under color of state law, improper legislative voting for unauthorized funds, improper organization of town council, ineligibility of council members for council positions, failure to prosecute election law violations, violation of political campaign laws, liability of respondent Melissa K. Marland, an Administrative Law Judge, for signing an order she knowingly knew to be based on fraudulent circumstances, failure to protect the public from injury for violation of equal protection of the laws by conspiring to protect each other, 13 counts of alleged violations seeking

relief from $10,000,000.00 in punitive damages to costs of litigation.

This complaint was dismissed by the District Court after finding respondents had acted in their legislative capacity and are absolutely immune from liability; the petitioner lacked standing to maintain the action; the petitioner had failed to allege any facts giving rise to a claim she had been deprived of a federally guaranteed constitutional right; that respondents did not act under color of state law; and that the conspiracy claims were conclusory and unsupported by factual allegations. McMahon v. Trump, C/A No. 89-20-M-K (N.D. W. Va. Oct. 3, 1989; Jan. 17, 1990; Jan. 30, 1990).

5. The petitioner then filed an appeal with the United States Court of Appeals for the Fourth Circuit on

November 15, 1989. The Fourth Circuit affirmed. McMahon v. Trump, No. 89-2840, supra.

DISCUSSION

It is difficult for respondents to know what exactly to answer. Petitioner's present appeal persists with the same conclusory and opinionated statements she has always maintained. She has mixed self-originating opinions with a pastiche of legal authority. These are usually unrelated, not based in factual circumstances and often without regard to the decisions of previous courts which have entertained her complaints.

Just as consistently the federal courts have found her to be without standing; that there is no federally cognizable claim; that pertinent respon-

dents did not act under "color of state law"; that petitioner has failed anywhere to allege any facts which give rise to a claim that she has been deprived of any "federally guaranteed constitutional right" by respondents. McMahon v. Trump, C/A No. 89-20-M-K, supra; McMahon v. Trump, No. 89-2840, supra. The following is an abbreviated record of arguments the respondents have maintained and the courts below have upheld.

A. STANDING

Petitioner has expressed no "injury in fact, economic or otherwise," Association of Data Processing Service Organizations, Inc. v. Camp, 397 U.S. 150, 152 (1970), to herself or anyone else. She claims individuals have done harm to constitutional duties and rights but alleges no harm or interest within a

constitutionally protected zone of interests that are to be protected or regulated by law.

B. LIABILITY OF STATE OFFICIALS

Petitioner continues to assert that state officials have no discretion in matters on which she vehemently disagrees. In particular, respondent David H. Savasten, Prosecuting Attorney of Morgan County, West Virginia, is singled out for not prosecuting a case which petitioner deems he had no discretion in. In West Virginia, not unlike other jurisdictions, a prosecuting attorney is allowed discretion in the implementation of his duties. Skinner v. Dostert, 166 W. Va. 752, 278 S.E.2d 624 (1981).

Petitioner made this same claim of other respondents that they are liable

for actions they took in their official capacity. But prosecutors have discretion; judges (respondents Steptoe, Marland, Frye and Taylor) have immunity within their judicial duties, Bradley v. Fisher, 13 Wall. 335 (1872); and legislators (respondents Gruber, Metzger, Hall, Borell, Parrill) have immunity within their legislative duties. Lake Country Estates, Inc. v. Tahoe Regional Planning Agency, 440 U.S. 391 (1979). Petitioner fails to allege actionable claims and refuses to accept the rulings of state and federal courts that she hasn't.

C. CONSPIRACY

Conspiracies may not be pled in a conclusory fashion and should be supported with reference to materials surrounding the claims. Slotnick v.

Staviskey, 560 F.2d 31 (1st Cir. 1977). Secondly, conspiracies only exist when two or more persons combine to accomplish a crime or some unlawful purpose. But allowing an individual to run for office who qualifies under state law is not to make a conspiracy nor is the pursuit of a water contract deemed in a town's best interest by its elected council a conspiracy. Again the plaintiff fails to show factual circumstances for her allegations except that she vehemently disagrees with what elected officials and judges have decided within their official capacities.

CONCLUSION

The respondents have fought this legal harassment for nearly four (4) years and on every occasion have answered factually and responsibly. Every court

has found it necessary to dismiss petitioner's claims for lack of merit, yet each has given a fair and objective ear to all legal issues presented and all fact patterns alleged. This misguided and highly personal harassment should come to a finish. Respondents respectfully urge that this Court deny certiorari.

Respectfully submitted,

Franklin D. Cleckley
P. O. Box 4
Morgantown, WV 26505

COUNSEL FOR RESPONDENTS

Supreme Court, U.S.
FILED
MAR 22 1991
OFFICE OF THE CLERK

NO. (3) 90-1073

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1990

MARIE M. MCMAHON

Petitioner,

v.

CHARLES S. TRUMP, IV, ET AL

Respondents.

Petitioner's Reply Brief to Respondent's Reply Against Writ of Certiorari

For Respondents:

Franklin D. Cleckley
P. O. Box 4
Morgantown, WV 26505
(304) 292-3652

For Petitioner:

Marie M. McMahon, pro se
103 Pratt Street
Berkeley Springs, WV 25411
(304) 258-1117

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PETITIONER'S REPLY BRIEF

Comes now the Petitioner pursuant to Rules 15 (6), 18.8, 29 and 33, and offers the following rebuttal in reply to Respondent's Reply Brief filed herein.

Councel for Respondents has mostly confirmed the facts as pled by Petitioner in her Petition. Petitioner is grateful to Counsel for furnishing Case Numbers below which was inadvertently omitted by Petitioner and to THIS COURT she offers her apology. Counsel did NOT inform THIS COURT that Cases 88-P-13/88-P-14 were tried together (per transcript); that neither Constitutional issue was addressed by the three-judge panel in spite of Petitioner's pleas that they PLEASE do so; she was simply ignored by them re same.

As to the attorney fees allowed, it is the Petitioner's position that to be "duly" elected, one must follow the rules of laws applicable thereto. Due process applicable to all was not forthcoming, per said election. We, the people, could not get our government of-

ficials individually or collectively, to uphold and support the Constitutions and other applicable laws. Duly, per Black's is "In due or proper form and manner, according to legal requirements"..."according to law in both form and substance." (Case law cited omitted).

Those elected soon showed us WHY their illegal acts by giving Developers(Respondents, Kesecker/Seely) water extension lines and eighty (80) taps. That is part of the acts in furtherance of the conspiracies to put the en-eligible-disqualified persons to hold office, in office in the first place.

Additionally, these acts can not be termed "legislative acts"...they were not in the position to legislate at that time, had to get in. They later voted for each other's attorney fees and Gruber even signed the checks and why not, she had no worry, if taken to court it had been demonstrated to her the courts would uphold her illegal ways to include violation of the Constitutions all had sworn to support. It is still the same...i.e.,no place to go to have

the Constitutions upheld and supported, locally (some believe in the state) and WHY we are APPEALING TO THIS COURT. Petitioners did have same demonstrated to them in this case; it did go before the West Virginia Court of Appeals, who failed to take action. It is the position of Petitioners that should THIS COURT fail to act in a very strong decisive manner that not only is the State of West Virginia, but many states in great trouble judicially because of "cronysim" and what it entails, which seems to be the destruction of the United States Constitution, State Constitutions and other good laws made for the benefit of all. The President of the United States has spoken out on television about the fact that judges should administer the laws as written and not make up their own, or words to that effect. OATHS OF OFFICE MUST BE TAKEN SERIOUSLY!

Petitioner can find no law that allows for such acts by Respondents; the courts lose jurisdiction of the matter before them when they violate fundamental rights of litigants

and it has so been stated by THIS COURT. It is not something Petitioner dreamed up; it is for the benefit of all, equally, and Petitioners feel IT MUST BE REITERATED IN STRONG LANGUAGE WHICH LEAVES NO ROOM FOR DOUBT BY THOSE WHO WOULD CONTINUE SUCH ABUSES, AS HEREIN! Such laws are not Petitioner's opinions...they are those of the COURTS, SUPREME AND APPELLATE.

At page 6, Counsel forgot to state that the prayer for relief also seeks to have the attorney fees cited, returned, i.e., $3463.93. He also forgot two million dollars compensatory damages. It is very low, but how does one PRICE The United States Constitution?

> Compensation is a misleading term and is used merely for lack of a word more nearly expressing the thought of the law which permits recovery of imponderable and intangible thing for which there is no money equivalent. Stutsman v. Des Moines City Ry., Co., 180 Iowa 524, 163 N.W. 580, 585.

Compensation, per se, is described as"Indemnification; payment of damages; making amends;...remuneration for the injury directly and proximately caused by breach of contract or duty. (Black's 4th Ed.,page 354,)The breach

of the duty-owed responsibility intentionally and deliberately, to grant the rights, under color, causing injury make Respondents liable.

Re Counsel's Discussion: Page 7. We are sure it is difficult "to know what exactly to answer". Petitioner is well aware of the fact there are no answers that can defend such acts by Respondents! None that are legal!

As to "Conclusory and opinionated statements" by her, she stated the facts, researched the laws and quoted same applicable to the facts...it is completely related and as to the decisions of previous courts entertaining her complaints....she does KNOW when the courts do not **rule per** Constitutions, refuse to rule at all and are arbitrary and certainly does not approve of such acts. She has consistently held that the <u>due process</u> due was not forthcoming; pled in lower courts denial of "equal protection" to provide personal gain to the Respondents; that laws apply to all equally, supposedly, but not herein, as pled.

Of course the acts were under color of state laws in state courts; could only be done

clothed with state authority. Counsel, himself pled the three-judge panel and circuit court. THEY ARE STATE ACTORS. Others were willing participants therewith said state actors in the violations of Constitutions and other statutes, making all actors under color of state law, at state level. Then we come to district court who went along with the arguments and DENIED FIRST AMENDMENT RIGHT to access to court to redress grievances and snowballed at the 4th Circuit of Appeals who affirmed the district court.

As to standing and injury. Of course injury is pled, economic and otherwise. Severe emotional and mental anguish were pled and taxpayers should not have to pay their government to violate their Constitutional rights; beg for equal treatment for equal facts as pled herein nor the right to vote and have their vote count equally for them...candidates should at least meet the same requirements as voters. People not eligible to hold office should not be able to spend taxpayer money to gain personally for such illegal acts; nor should those already in office aid and abet by violating their oaths

of office in order to so act. Such spending is economic injury to taxpayers, of which this Petitioner is one such taxpayer. The public welfare is at stake.

Anyone should be able to fight for the United States Constitution...they are called to do so...to protect democracy. Petitioner and others think The United States Constitution the greatest document ever written...she gets very emotional concerning such abuses...she was in shock for days when the three-judge panel failed to rule according to same and many saw her tears concerning such abuse. She is not the only one; such Constitutional Torts shocks the conscience of ordinary man. Such acts are exactly the opposite of what our judicial system is supposed to be all about. 42 U.S.C., § 1983 was written for provision of recourse for such arbitrary acts done with intention and willfully (lack of substantive due process) cited here in. THIS COURT has so stated in laws cited herein; <u>these are not Petitioner's opinion</u>, read for yourself, Counsel.

As to libility of state officials, page 9,

1st sentence...again, it is not that Petitioner vehemently disagrees, as stated above, so do the applicable laws to the facts by Appellate Courts and THIS COURT.

Further, a court can not legally change what has been written (statutes) by simply ignoring same or violating, which adds to the problem and can not be allowed to stand. Courts should administer according to statutes. Prosecuting attorneys do not have discretion when the word SHALL is written into statutes. Shall is not discretion...it is COMMAND. The United States Constitution says in the Supremacy Clause that the judges in every state SHALL be bound thereby. No discretion is allowed for one class of persons as opposed to another, i.e., federal employees vs. state employees or any other government; laws apply to all, per Constitutions...no discrimination. When judges act unconstitutionally, they lose jurisdiction and are subjected to the consequences of their illegal acts...not immune...to act unconstitutionally can NOT be considered a judicial act. No judge can act until taking the oath to sup-

port the Constitutions. They only have authority within the bounds of the laws. Surely Counsel should know this.

Additionally, legislative people have no right to violate statutes, either, which Respondents herein certainly did. Petitioner not only alleged actionable claims, she cited the statute violated to the lower courts.

(The Respondents seem to be mad that a non-lawyer has caught such illegal acts, pled same and supports her position with applicable laws. There appears to be invidious discrimination against her; there must be at least 20 to 30 lawyers giving aid to try to defeat her, however, she feels the Constitutions are worth fighting for. She does resent the misleading statements and lack of complete truth.)

Re conspiracy, page 10. Petitioner has in the past, and herein, supported conspiracy with the acts of Respondents citing specific facts. She agrees "Conspiracies only exist when two or more persons combine to accomplish a crime or some unlawful purpose". That is exactly what happened. Two and more combined to violate

the Constitutional provisions provided for all (that is crime) and the way it was done was "unlawful purpose", illegal means used to make personal profit. The water contract was NOT deemed in the town's best interest...it WAS DEEMED IN THE DEVELOPER/LAWYER/bank/council-person best interest. The Town had to pump water and pay extra equipment/labor as a result...pictures at lower court show such pumping.

Re Conclusion: Maybe Respondents call it harassment to be told by pleadings in court papers of their illegal ways and claim to have answered factually and responsibly. Petitioner disagrees. Truth is, they have not answered factually always and it is the Petitioners who have been abused and harassed because they try to have the laws enforced, upheld and supported by those who had the duty-owed responsibility to do just that for the welfare of the public, however, their "Clique cronies" means more to them. Most Americans feels that our Constitutions should be upheld; all who care about what same provides and realize, cherish

and value the worth of same; those who do not wish to see that great instrument destroyed and in effect, of no use to certain ones.

As to every court "Given a fair and objective ear" quoting Respondents Counsel, it is Petitioner's position they have gone all out to take care of "cronies", at the expense and abuse of Constitutional Rights due all litigants per same Constitutions. SUCH ACTS MUST STOP!

CONCLUSION

For those reasons pled in the Petition and herein, the Writ prayed for should issue and Petitioner prays that THIS COURT will use their superior knowledge, please take judicial notice of all that is involved to reverse such acts as complained of herein.

Respectfully submitted,

Marie M. McMahon

Marie M. McMahon, pro se
103 Pratt Street
Berkeley Springs, WV 25411
(304) 258-1117